

## Chapter IV

# The Executive Department

## The Governor

The supreme executive power of the State of California is vested in the Governor, whose duty it is to see that the law is faithfully executed.<sup>1</sup> The Governor is elected by the people for up to two terms of four years,<sup>2</sup> and receives an annual salary of \$120,000.<sup>3</sup>

No person is eligible for the office of Governor who is not 18 years of age, and who has not been a citizen of the United States and a resident of this state for five years immediately preceding his election.<sup>4</sup>

The present Governor of California is former U.S. Senator and Mayor of San Diego, the Honorable Pete Wilson. Governor Wilson is the 36th person to serve as Chief Executive of the State.

The Governor is Commander in Chief of the militia of this state.<sup>5</sup> He is the sole official organ of communication between the government of this state and the federal government and the other states of the United States.<sup>6</sup>

He must supervise the official conduct of all executive and ministerial officers, and he must see that all offices are filled and their duties performed.<sup>7</sup>

The Governor may appoint and fix the salaries of such assistants and other personnel as he deems necessary for the proper conduct of his office. The salaries of these staff assistants may not exceed the salaries paid to certain statutorily appointed state officers.<sup>8</sup> The Governor normally appoints a member of his staff to serve as his legislative secretary whose primary function is to maintain liaison between the executive office and the Legislature.

In the event of a vacancy occurring in the office of Lieutenant Governor, Secretary of State, Attorney General, Treasurer, Controller, Superintendent of Public Instruction, or on the State Board of Equalization, the Governor nominates a person to fill the vacancy subject to confirmation by the majority of the Senate and a majority of the Assembly. A successful nominee would hold office for the balance of the unexpired term.<sup>9</sup>

<sup>1</sup> *Constitution*, Article V, Section 1.

<sup>2</sup> *Constitution*, Article V, Section 2. "In case any two or more persons have an equal and highest number of votes for either Governor or Lieutenant Governor, the Legislature shall, by a joint vote of both houses, choose one of the persons to fill the office." *Elections Code*, Section 20503.

<sup>3</sup> *Constitution*, Article V, Section 12. *Government Code*, Section 12000. This section set the Governor's salary at \$85,000 as of January 1987. On June 5, 1990, the voters adopted Proposition 112, which added Article III, Section 8 to the Constitution, creating the California Citizens Compensation Commission. The commission has the authority to review and increase the salary levels of the Governor, Lt. Governor, Atty. General, Controller, Treasurer, Sec. of State, Sup. of Public Instruction, Insurance Commissioner, Board of Equalization Members and Members of the State Legislature, and has set the Governor's salary at its current level. See, "California Citizens Compensation Commission Salary and Benefit Resolution, June 23, 1993."

<sup>4</sup> *Constitution*, Article V, Section 2. This section requires that the Governor be an elector. An elector is described as a person of the age of 18 years. *United States Constitution*, Amendment XXVI; *Constitution*, Article II, Section 2. The President of the United States must be a natural born citizen, 35 years of age and a resident of the United States for 14 years. *United States Constitution*, Article II, Section 1(5).

<sup>5</sup> *Constitution*, Article V, Section 7.

<sup>6</sup> *Government Code*, Section 12012.

<sup>7</sup> *Government Code*, Sections 12010, 12011.

<sup>8</sup> *Government Code*, Sections 11550, 11552, and 12001.

<sup>9</sup> *Government Code*, Section 1775.

When any office becomes vacant and no method is provided by law for filling such vacancy, the Governor may, by appointment, fill the vacancy until a successor qualifies.<sup>10</sup>

The Governor's appointment power also extends over two significant areas of state government. First, the Governor has authority to fill vacancies in the judiciary (municipal, superior, appeals and Supreme courts) and to fill newly created judgeships.<sup>11</sup> Second, the Governor has power to appoint a large number of positions throughout the executive department, subject to confirmation by the State Senate.<sup>12</sup>

The Governor may offer rewards, not exceeding \$50,000, for information leading to the arrest and conviction for certain crimes.<sup>13</sup>

When a fugitive from justice under the laws of another state is found in this state and a written demand for his or her extradition has been received, it is the duty of the Governor to have him or her arrested and delivered up to the executive officer of the demanding state.<sup>14</sup>

The Governor is required to report to the Legislature each reprieve, pardon and commutation granted, stating the pertinent facts in each case and his reasons for granting it. The Governor may not, however, grant a pardon or a commutation in a case of impeachment or to a person who was twice convicted of a felony unless a majority of the Supreme Court (four justices) concurs.<sup>15</sup>

The Governor must communicate with the Legislature, during each calendar year, regarding the condition of the state and may make recommendations.<sup>16</sup> The Governor must also submit an itemized budget to the Legislature within the first 10 days of each year.<sup>17</sup> He may, on extraordinary occasions, convene the Legislature by proclamation, stating the purposes for which he has convened it; and, when so convened, the Legislature has no power to legislate on any subject other than those specified in the proclamation.<sup>18</sup> The call for a special session of the Legislature may be expanded by the Governor adding additional items after the Legislature has convened and prior to adjournment.<sup>19</sup>

The Governor may veto any bill passed by the Legislature and return it with his objections to the house of origin. He may also reduce or eliminate one or more items of appropriation while approving other portions of the bill.<sup>20</sup>

<sup>10</sup> *Constitution*, Article V, Section 5.

<sup>11</sup> *Constitution*, Article VI, Section 16; *Government Code*, Section 71180.

<sup>12</sup> See Chapter II, *supra*, page 7.

<sup>13</sup> For a listing of the crimes for which the Governor may offer this reward, see *Penal Code*, Section 1547.

<sup>14</sup> *Penal Code*, Sections 1548.1, 1548.2; *United States Constitution*, Article IV, Section 2: 18 U.S.C.A. 3182.

<sup>15</sup> *Constitution*, Article V, Section 8; *Penal Code*, Section 4800. A pardon is usually understood to exempt an individual from his or her punishment for the crime of which he or she has been convicted, and additionally to remove any disqualification or disability that necessarily occurs as a result of the conviction. However, under the habitual criminal statute in California it has been held (*People v. Biggs*, 9 Cal. 2d 508) that it does not relieve the offender of the prior conviction within the meaning of that statute which prescribes increased punishment for habitual criminals or those previously convicted of a crime. See also 8 *Op. Att'y Gen.* 87.

<sup>16</sup> *Constitution*, Article V, Section 3. This is commonly referred to as the Governor's "state of the State message".

<sup>17</sup> *Constitution*, Article IV, Section 12(a); *Government Code*, Section 13337.

<sup>18</sup> *Constitution*, Article IV, Section 3(b). See also, *Martin v. Riley* (1942), 20 Cal. 2d 28 and *Legislative Counsel Opinion No. 2105*, *Journal of the Assembly*, 1960 Second Extraordinary Session, p. 13.

<sup>19</sup> 4 *Op. Att'y Gen.* 53. " \* \* \* while some doubt may exist as to the authority of the Governor, the applicable decisions in other jurisdictions and the practice in this State are such that the courts would hold that the Governor may supplement or amend his call to the Legislature after the session has been convened and prior to adjournment."

<sup>20</sup> *Constitution*, Article IV, Section 10(e). The power of item veto is not given to the President of the United States, who must approve or veto the bill in its entirety. *United States Constitution*, Article I, Section 7.

Prior to 1972, when legislative sessions were of an indeterminate duration, the Governor had the power to adjourn the Legislature if the two houses disagreed as to the time of adjournment.<sup>21</sup>

### ***The Governor's Legislative Role***

While the trichotomy of the separation of powers among the executive, legislative and judicial branches is quite convenient and useful, it can, like many other academic divisions, be misleading.

The Governor operates, out of necessity, as a "legislator" to accomplish and put into execution the policies of his administration. He instigates and influences legislation. He submits his views on the problems confronting the state and details policy proposals before the Legislature.

The exercise of his veto must be viewed as a quasi-legislative power. The Governor's Budget is replete with policy as well as fiscal implications. In addition, the Governor may call the Legislature into extraordinary session to consider specific issues identified, defined and limited by him.

Through the combination of these and other powers, and with the assistance of his staff, the Governor has considerable impact upon and involvement with the legislative process.

### ***The Governor's Cabinet***

In addition to his immediate staff, the Governor utilizes a cabinet, composed of the secretaries of the eight major state agencies (State and Consumer Services; Business, Transportation and Housing; Environmental Protection; Child Development and Education; Food and Agriculture; Health and Welfare; Resources; and, the Youth and Adult Correctional Agency), the Director of Finance, and the Director of Industrial Relations.

This conglomerate serves as the Governor's chief policy advisory body and, in their individual capacities, implement and coordinate the Governor's policies throughout the state.

The cabinet supplies the Governor with a comprehensive view and current résumé of state operations and serves as a source for long-range planning.

### **Succession to Office of Governor**

The Constitution provides that in the event of a vacancy in the office of Governor, the Lieutenant Governor shall succeed to that office. Upon succeeding to the office of Governor, the former Lieutenant Governor could then nominate a successor to the Lieutenant Governorship. He also serves as *acting* Governor during the impeachment, absence from the state, or other temporary disability of the Governor.<sup>22</sup>

In the event both the offices of Governor and Lieutenant Governor become vacant, the President pro Tempore of the Senate would then

<sup>21</sup> Acting Governor Hugh M. Burns did utilize this power to bring the 1968 Regular Session of the Legislature to a close. See *Journal of the Assembly, 1968 Session*, p. 7256. The regular sessions of the Legislature are now adjourned by operation of law. See *Constitution*, Article IV, Section 3(a).

<sup>22</sup> *Constitution*, Article V, Section 10.

succeed to the office of Governor; if there is no President pro Tempore of the Senate, then the Speaker of the Assembly would become Governor; if there is no Speaker of the Assembly, then the Secretary of State; if there is no Secretary of State, then the Attorney General; if there is no Attorney General, then the Treasurer; or if none of them, then the Controller. If none of the above officers were available because of a war or an enemy-caused disaster, a person designated by law would become Governor.<sup>23</sup> The authority to raise the question concerning a vacancy in the office of Governor, or the existence of a temporary disability, is vested in a Commission on the Governorship. This commission is composed of the President pro Tempore of the Senate, the Speaker of the Assembly, President of the University of California, Chancellor of the State Colleges, and the Director of Finance. If such a question is raised, the Supreme Court of the State of California is vested with exclusive jurisdiction over the matter.<sup>24</sup>

In case of impeachment of the Governor or officer acting as Governor, his absence from the state, or his other temporary disability to discharge the powers and duties of office, then the powers and duties of the office of Governor devolve upon the same officer as in the case of vacancy in the office of Governor, but only until the disability shall cease.<sup>25</sup>

Two of California's Governors have died in office, and five have resigned. Thus, seven Lieutenant Governors have succeeded to the office of Governor since 1849.<sup>26</sup> No officer other than the Lieutenant Governor has ever succeeded to the Governorship.

### The Lieutenant Governor

The Lieutenant Governor is elected at the same time and places and in the same manner as the Governor. Also similar to the Governor are his qualifications, term of office, and limit to two terms.<sup>27</sup> In case of a vacancy in the office of Governor he shall become Governor. In the event of impeachment, absence from the state or temporary disability of the Governor, he shall serve as acting Governor.<sup>28</sup> The salary of the Lieutenant Governor is \$90,000 per annum.<sup>29</sup>

The Constitution provides that the Lieutenant Governor shall be President of the Senate, but that he shall have only a casting vote.<sup>30</sup> The purpose of a casting vote is to break a tie. As a tie vote, in effect, defeats a proposition, the casting vote may be used only if it will provide the necessary majority required. For example, a bill in the

<sup>23</sup> *Constitution*, Article V, Section 10; Article IV, Section 21; *Government Code*, Sections 12058, 12061. There are similar statutory provisions governing the succession to the office of Governor-elect and Lieutenant Governor-elect in the event of their death or disability or other failure to take office. See *Government Code*, Sections 12058.5, 12059.

<sup>24</sup> *Constitution*, Article V, Section 10; *Government Code*, Sections 12070–12076. See also, *In re Petition of Commission on Governorship* (1979), 26 Cal. 3d 110.

<sup>25</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058.

<sup>26</sup> Lieutenant Governors who have succeeded to the office of Governor are: John McDougal, 1851, on resignation of Governor Peter H. Burnett; John G. Downey, 1860, on resignation of Governor Milton S. Latham; Romualdo Pacheco, 1875, on resignation of Governor Newton Booth; Robert W. Waterman, 1887, on death of Governor Washington Bartlett; Wm. D. Stephens, 1917, on resignation of Governor Hiram W. Johnson; Frank F. Merriam, 1934, on death of Governor James Rolph, Jr.; and Goodwin J. Knight, 1953, on resignation of Governor Earl Warren.

<sup>27</sup> *Constitution*, Article V, Sections 9, 11.

<sup>28</sup> *Constitution*, Article V, Section 10.

<sup>29</sup> *Government Code*, Section 11552.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>30</sup> *Constitution*, Article V, Section 9.

California Senate requires 21 votes for passage and if the vote is 20 to 20, the Lieutenant Governor has a casting vote, but he does not have a casting vote if the vote is 19 to 19, because even if he would cast an "Aye" vote, there would only be 20 affirmative votes on the bill.

Until 1915, the duties of the Lieutenant Governor were to preside over the Senate and, under certain conditions, to act in place of the Governor. Since 1915, however, additional duties have been imposed upon him as a member of various boards and commissions. He is ex officio one of the Regents of the University of California;<sup>31</sup> Chairman of the Commission for Economic Development;<sup>32</sup> Vice Chairman of the Commission for the Californias;<sup>33</sup> and, a member of the State Lands Commission;<sup>34</sup> California Emergency Council;<sup>35</sup> the Reciprocity Commission;<sup>36</sup> World Trade Commission;<sup>37</sup> and, a Trustee of the California State University.<sup>38</sup>

The present Lieutenant Governor is former Speaker of the Assembly, the Honorable Leo T. McCarthy.

### Other State Officers

The Secretary of State, Attorney General, Treasurer, Controller, and Superintendent of Public Instruction, are elected at the same time and places, and in the same manner as the Governor and Lieutenant Governor, to hold office for a maximum of two four-year terms.<sup>39</sup> The four elected members of the Board of Equalization are elected at the same time as the Governor to four-year terms and are also subject to a two-term limit.<sup>40</sup> Finally, there is the Insurance Commissioner who is elected to no more than two four-year terms, also at the same time and place, and in the same manner as the Governor.<sup>41</sup>

#### *The Secretary of State*

The Government Code provides that the Secretary of State shall keep a correct record of the official acts of the Legislative and Executive Departments of the government and perform such other duties as may be assigned by law.<sup>42</sup> The Secretary's salary is \$90,000 per annum.<sup>43</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the Secretary of State becomes the third officer next in line of succession to the office of Governor.<sup>44</sup>

The Secretary of State is charged with the custody of the enrolled copy of the Constitution, all acts and resolutions passed by the

<sup>31</sup> *Constitution*, Article IX, Section 9.

<sup>32</sup> *Government Code*, Section 14999.1.

<sup>33</sup> *Government Code*, Section 8704.

<sup>34</sup> *Public Resources Code*, Section 6101.

<sup>35</sup> *Government Code*, Section 8575.

<sup>36</sup> *Vehicle Code*, Section 2600.

<sup>37</sup> *Government Code*, Section 15364.2.

<sup>38</sup> *Education Code*, Section 66602.

<sup>39</sup> *Constitution*, Article V, Section 11; *Constitution*, Article IX, Section 2.

<sup>40</sup> *Constitution*, Article XIII, Section 17.

<sup>41</sup> *Insurance Code*, Section 12900, as amended by *Statutes of 1993*, Chapter 1227.

<sup>42</sup> *Government Code*, Section 12159.

<sup>43</sup> *Government Code*, Section 11552.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>44</sup> *Government Code*, Section 12058. The Secretary of State succeeds after the President pro Tempore of the Senate and the Speaker of the Assembly.

Legislature, the Journals of each house, the Great Seal, and all books, records, deeds, parchments, maps, and papers, kept or deposited in the office pursuant to law.<sup>45</sup>

"Public documents must remain at the place designated by law, and can only be removed where authorized by law. The place for deposit of the enrolled copy of the Constitution and the original laws is the office of the Secretary of State and no authority is granted expressly or by implication to exhibit them elsewhere." <sup>46</sup>

The Secretary of State is the custodian of the public archives and must maintain and properly equip safe and secure vaults for the preservation of the documents placed in his charge.<sup>47</sup> Any item that is required by law to be delivered to or filed with the Secretary shall be placed in the archives.<sup>48</sup> The Secretary, on his own initiative, may also place any item that he deems to be of historical value in the archives.<sup>49</sup> In addition, the Department of General Services may direct the Secretary to store items from state agencies. These materials may be returned to the agency, with the Department of General Services' approval, should the Secretary deem them to be without historical value.<sup>50</sup>

The Secretary of State is the chief elections officer of the state and has the responsibility for administering the provisions of the Elections Code.<sup>51</sup> Foremost among these duties is preparing and ordering the printing of the ballot pamphlet. This pamphlet contains a complete copy of the text of all the measures submitted to the voters; a summary of the measure prepared by the Attorney General; an analysis of the measure prepared by the Legislative Analyst; arguments in support of the measure and rebuttals thereto; and, the total vote on the measure in the Senate and the Assembly if the proposition was passed by the Legislature.<sup>52</sup>

A total of 12,475,000 election pamphlets were printed and distributed for the 1992 general election. Of this total, approximately 12,250,000 were printed in English, 100,000 in Spanish, 50,000 in Chinese, and 25,000 each in Vietnamese, Japanese and Tagalog.

The Secretary must compile the election returns and issue certificates of election to successful candidates;<sup>53</sup> compile the returns and certify the results of initiative and referendum elections;<sup>54</sup> certify acts delayed by referendum and prepare and file a statement of the vote.<sup>55</sup>

He shall record all official acts of the Legislature;<sup>56</sup> conveyances made to the state;<sup>57</sup> all articles of incorporation filed in his office;<sup>58</sup>

<sup>45</sup> *Government Code*, Section 12160.

<sup>46</sup> 12 *Op. Att'y Gen.* 147. See also, 52 *Op. Att'y Gen.* 83.

<sup>47</sup> *Government Code*, Section 12222.

<sup>48</sup> *Government Code*, Section 12223.

<sup>49</sup> *Government Code*, Section 12224.

<sup>50</sup> *Government Code*, Sections 12224, 12225.

<sup>51</sup> *Government Code*, Section 12172.5.

<sup>52</sup> *Elections Code*, Sections 3569-3572; *Government Code*, Sections 88000-88003.

<sup>53</sup> *Elections Code*, Sections 6056, 17121, 17123, 25050. The candidates include those for statewide office, Assembly, Senate, Congress, Board of Equalization, and the Supreme, appellate, and superior courts.

<sup>54</sup> *Government Code*, Sections 12165; *Elections Code*, Section 17121.

<sup>55</sup> *Government Code*, Sections 12165, 12166.

<sup>56</sup> *Government Code*, Section 12159.

<sup>57</sup> *Government Code*, Section 12164.

<sup>58</sup> *Corporations Code*, Section 169.

and the receipt of bonds for all officers required by law to be filed with the Secretary.<sup>59</sup> He compiles, publishes and distributes a roster of state and local public officials of California<sup>60</sup> and a directory of registered lobbyists.<sup>61</sup>

The Secretary's office also serves as a repository for the various registration forms, financial statements and expenditure reports which are required to be filed in accordance with the provisions of the *Political Reform Act of 1974*.<sup>62</sup> These documents which are submitted by candidates, elected officials, campaign organizations, political organizations and by lobbyists and their employers are available and open to public inspection in the Secretary's office.<sup>63</sup>

He must affix the Great Seal, with his attestation, to commissions, pardons and other public documents which require the Governor's signature.<sup>64</sup>

### ***The Attorney General***

The Attorney General is the chief law enforcement officer of the state and is elected at the same time and places as the Governor for a maximum of two four-year terms.<sup>65</sup> He receives a salary of \$102,000 per year.<sup>66</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the Attorney General becomes the fourth officer next in line of succession to the office of Governor.<sup>67</sup>

To be eligible for the office of Attorney General it is necessary to have been admitted to practice before the California Supreme Court for a period of at least five years immediately preceding election or appointment. While holding office, the Attorney General is prohibited from engaging in the private practice of law and is required to devote his entire time to the service of the state.<sup>68</sup>

Former U.S. Congressman, the Honorable Dan Lungren is the present Attorney General. It is his duty to see that the laws of the state are uniformly and adequately enforced in every county. He has direct supervision over every district attorney, sheriff, and such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices.<sup>69</sup>

Whenever, in the opinion of the Attorney General, any law of the state is not being adequately enforced in any county, it is his duty to prosecute such violations of law over which the superior court has jurisdiction, and in such cases he has the powers of the district attorney.

<sup>59</sup> *Government Code*, Section 12163.

<sup>60</sup> *Government Code*, Sections 12240, 12241.

<sup>61</sup> *Government Code*, Section 86109.

<sup>62</sup> *Government Code*, Section 81000, et seq.

<sup>63</sup> *Government Code*, Section 81008.

<sup>64</sup> *Government Code*, Section 12162.

<sup>65</sup> *Constitution*, Article V, Section 11.

<sup>66</sup> *Government Code*, Section 11551.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>67</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058. The Attorney General succeeds after the Secretary of State.

<sup>68</sup> *Government Code*, Sections 12503, 12504.

<sup>69</sup> *Government Code*, Sections 12550, 12560.

When required by the public interest, or directed by the Governor, he assists any district attorney in the discharge of his duties.<sup>70</sup>

The Attorney General is the head of the Department of Justice, and, as such, he is the attorney in charge of all legal matters in which the state is interested, except the business of the Regents of the University of California or such other boards or officers as are authorized to employ their own attorneys. He is required to attend the Supreme Court and prosecute or defend all causes to which the state, any state officer, or county (unless the county's interest is adverse to the state) is a party.<sup>71</sup>

He may make such investigations as are necessary to determine whether or not there has been compliance with the provisions of the Education Code relative to the issuance of degrees or diplomas by private educational institutions and corporations.<sup>72</sup>

The law provides that, prior to circulation of any initiative or referendum petition for signatures, a draft of the petition must be submitted to the Attorney General with a written request that he prepare a title and summary of the chief purpose and points of the proposed measure.<sup>73</sup>

He must institute investigations for the discovery of all real and personal property to which the state may be entitled by escheat and is designated by statute to represent Native Americans in California before the U.S. Indian Claims Commission.<sup>74</sup>

It is also the duty of the Attorney General to give his opinion on questions of law, in writing, to the Legislature, to the Governor, the Secretary of State, Controller, Treasurer, State Lands Commission, Superintendent of Public Instruction, any state agency prohibited by law from employing legal counsel other than the Attorney General, and any district attorney, when required by their respective offices.<sup>75</sup> He serves as legal adviser to all the state departments, as well as other important state boards and commissions.<sup>76</sup>

In the absence of the Chief Clerk and the inability of the senior members-elect present to agree upon one of their number to preside on the opening day of a legislative session, the Attorney General or one of his deputies shall call the Assembly to order.<sup>77</sup>

### ***The State Treasurer***

The State Treasurer is elected at the same time and places and in the same manner as the Governor for a maximum of two four-year terms<sup>78</sup> and receives a salary of \$90,000 per annum.<sup>79</sup>

The present treasurer is the Honorable Kathleen Brown, the 28th person to serve in this office.

<sup>70</sup> *Constitution*, Article V, Section 13.

<sup>71</sup> *Government Code*, Sections 12510–12512.

<sup>72</sup> *Education Code*, Section 94339. (Currently has sunset date of 6/30/96)

<sup>73</sup> *Constitution*, Article II, Section 10(d); *Elections Code*, Section 3502.

<sup>74</sup> *Government Code*, Sections 12523 and 12540. "In American Law 'escheat' signifies a reversion of property to the State in consequence of a want of any individual competent to inherit. The State is deemed to occupy the place and hold the rights of the feudal lord." —*Black's Law Dictionary*, Third Edition.

<sup>75</sup> *Government Code*, Section 12519. These opinions, while not controlling as a matter of law, have been accorded great deference by the courts.

<sup>76</sup> *Government Code*, Section 11157; and, e.g., *Business and Professions Code*, Sections 2020, 2317, 3027, 4804.

<sup>77</sup> *Government Code*, Section 9023.

<sup>78</sup> *Constitution*, Article V, Section 11.

<sup>79</sup> *Government Code*, Section 11552.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.



In case of vacancies in the offices of Governor and Lieutenant Governor, the State Treasurer becomes the fifth officer next in line of succession to the office of Governor.<sup>80</sup>

The Treasurer serves as the state's banker. It is her duty to receive and keep in the vaults of the State Treasury or on deposit in banks, all moneys belonging to the state not required to be received and kept by some other person, and she must receive and keep in the vaults of the State Treasury or on deposit with any Federal Reserve bank, or with certain designated banks or trust companies, bonds and other securities or investments belonging to the state.<sup>81</sup> The Treasurer must pay warrants drawn by the Controller and keep an account of all money received and disbursed.<sup>82</sup> A daily report must be filed with the Controller, indicating the amounts disbursed during the preceding day and the funds out of which they were paid.<sup>83</sup>

The State Treasurer is the Chairperson of the Pooled Money Investment Board which is charged with investing idle state moneys.<sup>84</sup> Earnings for the board's program for the fiscal year ending June 30, 1993 totaled \$1.085 billion, representing an overall earning rate of 4.71%. She is the chairperson or a member of the California Housing Finance Agency,<sup>85</sup> the California Pollution Control Finance Authority,<sup>86</sup> the Chairperson of the California Educational Facilities Authority<sup>87</sup> and a variety of finance committees which approve the sale of bonds.

The State Treasurer is responsible for selling all state bonds. During the 1992-93 fiscal year, the Treasurer's office sold bonds totaling almost \$18 billion. The various types of bonds sold during this time period and their subtotals were general obligation bonds (over \$2.6 billion); lease/purchase debt bonds (\$1.776 billion); revenue anticipation (short-term) notes (\$11 billion); and revenue anticipation warrants (\$2 billion).

At the request of either house of the Legislature, or of any committee thereof, the Treasurer must give written information as to the condition of the Treasury, or upon any subject relating to the duties of the office.<sup>88</sup>

The State Treasurer's accountability for cash in securities as of June 30, 1993 was in excess of \$40 billion.

On or before the 15th day of September in each even-numbered year, the Treasurer must report to the Governor the exact balance in the Treasury to the credit of the state, and a summary of the receipts and payments of the Treasury during the two preceding fiscal years.<sup>89</sup>

<sup>80</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058. The Treasurer succeeds after the Attorney General.

<sup>81</sup> *Government Code*, Section 12320.

<sup>82</sup> *Government Code*, Sections 12324, 12326.

<sup>83</sup> *Government Code*, Section 12328.

<sup>84</sup> *Government Code*, Sections 16480.1, 16480.2.

<sup>85</sup> *Health and Safety Code*, Section 50901.

<sup>86</sup> *Health and Safety Code*, Section 44515.

<sup>87</sup> *Education Code*, Section 94120.

<sup>88</sup> *Government Code*, Section 12330.

<sup>89</sup> *Government Code*, Section 12329.

***The State Controller***

The State Controller is the chief fiscal officer of the state and is elected at the same time and places and in the same manner as the Governor, for a maximum of two four-year terms.<sup>90</sup> He has a wide variety of duties which have been established both by the Constitution and by statute. His salary is \$90,000 per annum.<sup>91</sup>

In case of vacancies in the offices of Governor and Lieutenant Governor, the State Controller becomes the sixth officer next in line of succession to the office of Governor.<sup>92</sup>

No money can be drawn from the Treasury unless it is against an appropriation made by law, and upon warrants duly drawn by the Controller.<sup>93</sup>

Upon request, the Controller is required to provide the Legislature, or either house thereof, with written information relative to the fiscal affairs of the state or the duties of his office.<sup>94</sup>

Among other duties provided by law, the Controller must superintend the fiscal affairs of the state and suggest plans for the improvement and management of public revenues;<sup>95</sup> keep all accounts in which the state is interested, and keep a separate account of each specific appropriation, showing at all times the balance of the appropriation.<sup>96</sup>

The Controller supervises the state's fiscal concerns and audits all claims against it.<sup>97</sup> He directs the collections of all moneys due the state, and if necessary, he is authorized to go to court to recover the property or money owed.<sup>98</sup>

Claims for refunds under the Vehicle Fuel License Tax Law must be presented to and paid by him.<sup>99</sup> He has general supervision over the general procedure for tax sales, tax deeds, and redemptions and to this end may make any rules and regulations he deems advisable.<sup>100</sup>

In addition to the duties of his office, the State Controller is ex officio a member of the State Board of Equalization,<sup>101</sup> and serves on the Franchise Tax Board,<sup>102</sup> the State Lands Commission,<sup>103</sup> the State Board of Control,<sup>104</sup> the Pooled Money Investment Board,<sup>105</sup> the State School Building Finance Committee,<sup>106</sup> the California Water Resources Development Finance Committee,<sup>107</sup> and other important state boards and committees.

<sup>90</sup> *Constitution*, Article V, Section 11.

<sup>91</sup> *Government Code*, Section 11552.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>92</sup> *Constitution*, Article V, Section 10; *Government Code*, Section 12058. The Controller succeeds after the Treasurer.

<sup>93</sup> *Government Code*, Section 12440.

<sup>94</sup> *Government Code*, Section 12462.

<sup>95</sup> *Government Code*, Section 12411.

<sup>96</sup> *Government Code*, Section 12412.

<sup>97</sup> *Government Code*, Section 12410.

<sup>98</sup> *Government Code*, Section 12418.

<sup>99</sup> *Revenue and Taxation Code*, Sections 8101-8103.

<sup>100</sup> *Revenue and Taxation Code*, Section 158.

<sup>101</sup> *Constitution*, Article XIII, Section 17.

<sup>102</sup> *Government Code*, Section 15700.

<sup>103</sup> *Public Resources Code*, Section 6101.

<sup>104</sup> *Government Code*, Section 13901.

<sup>105</sup> *Government Code*, Section 16480.1.

<sup>106</sup> *Education Code*, Section 15909.

<sup>107</sup> *Water Code*, Section 12933.

The present Controller, and former Member of the Assembly, the Honorable Gray Davis, is the 27th person to serve in this office.

### ***The Superintendent of Public Instruction***

The Superintendent of Public Instruction is a nonpartisan officer, elected to four-year terms at the same time and place as the Governor, and is subject to a similar limit of two terms.<sup>108</sup> The annual salary for this statewide officer is \$102,000.<sup>109</sup>

He is ex officio Director of Education<sup>110</sup> and a member of the Board of Regents of the University of California.<sup>111</sup> He is Secretary and Executive Officer of the State Board of Education,<sup>112</sup> and, under its direction, he executes the policies which have been decided upon by the board, and directs the work of all appointees and employees of the board.<sup>113</sup>

He must superintend the schools of this state and prepare, have printed, and furnish to teachers and officers charged with the administration of laws relating to public schools, such blank forms and books as may be necessary in the discharge of their duties. He shall cause to have bound all valuable school reports, journals, and documents in his office, or received by him.<sup>114</sup>

The California Schools for the Deaf and for the Blind are also under his supervision and administration.<sup>115</sup> He also administers three diagnostic schools for neurologically handicapped children.<sup>116</sup> He must prescribe rules for their government, appoint the superintendents and other officers and employees, fix the compensation of teachers, and contract with the University of California, or with other public or private hospitals or schools of medicine, for the establishment and maintenance of diagnostic service and treatment centers for neurologically handicapped children.<sup>117</sup> He may also authorize the schools to establish and maintain teacher training courses to prepare teachers to instruct neurologically handicapped children in special classes in the public school system; and he must prescribe the standards for admission to these courses and for the contents of the courses.<sup>118</sup>

Not later than the 25th day of July of each year, he shall prepare an estimate of the amount of state school money that will be apportioned to each county or city and county for the current school year.<sup>119</sup>

<sup>108</sup> *Constitution*, Article IX, Section 2.

<sup>109</sup> *Education Code*, Section 33101; *Government Code*, Section 11552.5. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>110</sup> *Education Code*, Section 33303.

<sup>111</sup> *Constitution*, Article IX, Section 9.

<sup>112</sup> *Education Code*, Section 33004.

<sup>113</sup> *Education Code*, Section 33111.

<sup>114</sup> *Education Code*, Section 33112. See also Sections 33113–33124.

<sup>115</sup> *Education Code*, Sections 59002, 59102.

<sup>116</sup> *Education Code*, Sections 59200–59204.5.

<sup>117</sup> *Education Code*, Section 59203.

<sup>118</sup> *Education Code*, Section 59211.

<sup>119</sup> *Education Code*, Section 33118.

***The Board of Equalization***

The Board of Equalization was created by the State Constitution of 1879. The board consists of five voting members: four members elected for four-year terms at gubernatorial elections and the State Controller, who serves ex officio. The state is divided into four Board of Equalization districts with the voters of each district electing one member to no more than two terms.<sup>120</sup> A member of the board must be an inhabitant of the district for which he is chosen for the one year preceding his election or appointment.<sup>121</sup> Each member of the board receives \$95,052 per annum.<sup>122</sup>

The present board members are the Honorable Brad Sherman of Santa Monica (Second District); the Honorable Ernest J. Dronenburg, Jr. of San Diego (Third District); and the Honorable Matthew K. Fong, City of Industry (Fourth District). There is currently a vacancy in the First District.

The board has a wide variety of duties established by the Constitution and by statute. The California Constitution directs the board to ensure equity and uniformity relative to the assessment of all properties assessed by the 58 county assessors,<sup>123</sup> annually assess pipelines, flumes, canals, ditches, and aqueducts lying within two or more counties and property, except franchises, owned or used by regulated railway, telegraph, or telephone companies, car companies operating on railways in the state, and companies transmitting or selling gas or electricity;<sup>124</sup> assess taxes on insurance companies;<sup>125</sup> and assess and collect the excise taxes on the manufacture, importation and sale of alcoholic beverages.<sup>126</sup>

The board performs quasi-judicial, quasi-legislative, and administrative functions.

In its quasi-judicial role, the board serves as the appellate body in hearing and adjudicating appeals on final actions of the Franchise Tax Board under the state's Bank and Corporation Tax, Personal Income Tax, and the Senior Citizens Property Tax Assistance Laws.

In its quasi-legislative capacity, the board adopts rules and regulations and issues directives for the guidance of taxpayers, county assessors, and county assessment appeals boards.

In its administrative role, the board determines the values of companies assessed by the state for local property taxation and is the sole administrative agency for the following taxes: sales and use,<sup>127</sup> Bradley-Burns uniform local sales and use,<sup>128</sup> district transactions and use,<sup>129</sup> use fuel,<sup>130</sup> private railroad cars,<sup>131</sup> cigarettes and tobacco

<sup>120</sup> *Constitution*, Article XIII, Section 17. The districts are reapportioned by the Legislature after each decennial census. *Constitution*, Article XXI, Section 1; *Elections Code*, Sections 30040 et seq.

<sup>121</sup> *Government Code*, Section 15601.

<sup>122</sup> *Government Code*, Section 11552. See also *Constitution*, Article III, Section 8 and footnote 3, *supra*, p. 37.

<sup>123</sup> *Constitution*, Article XIII, Section 18.

<sup>124</sup> *Constitution*, Article XIII, Section 19.

<sup>125</sup> *Constitution*, Article XIII, Section 28(h).

<sup>126</sup> *Constitution*, Article XX, Section 22.

<sup>127</sup> *Revenue and Taxation Code*, Sections 6001–7176.

<sup>128</sup> *Revenue and Taxation Code*, Sections 7200–7212.

<sup>129</sup> *Revenue and Taxation Code*, Sections 7251–7273.

<sup>130</sup> *Revenue and Taxation Code*, Sections 8601–9355.

<sup>131</sup> *Revenue and Taxation Code*, Sections 11201–11702.

products,<sup>132</sup> alcoholic beverages,<sup>133</sup> timber yield,<sup>134</sup> energy resources surcharge,<sup>135</sup> 911 emergency telephone users surcharge,<sup>136</sup> and hazardous substances.<sup>137</sup>

The board assists in the administration of the motor vehicle fuel license tax (gasoline and aircraft fuel),<sup>138</sup> and the insurance tax.<sup>139</sup>

### ***The Insurance Commissioner***

The California Insurance Code establishes the office of Insurance Commissioner who is elected in the same place and manner as the Governor and serves a maximum of two four-year terms.<sup>140</sup> The Insurance Commissioner receives an annual salary of \$95,052.<sup>141</sup>

The Insurance Commissioner determines the sufficiency of securities to be given by those engaged in the insurance business<sup>142</sup> and no person may transact any class of insurance business without first being certified by the commissioner.<sup>143</sup> Beyond these provisions, the Commissioner is given broad powers to directly supervise the Department of Insurance<sup>144</sup> and to perform all duties under law in regulating the business of insurance in the state.<sup>145</sup>

The Commissioner's powers to certify compliance with applicable state law extend to approval of insurance forms,<sup>146</sup> approval of an insurance company's corporate name (as a prerequisite to the Secretary of State's filing of the articles of incorporation),<sup>147</sup> and, upon request of the State Treasurer, certification of qualifications of surety insurers for state demand or timed deposits or state investments in federal bonds.<sup>148</sup> The Commissioner also is designated to receive and administer a \$100,000 deposit from each title insurance company doing business in the state as a guarantee fund for the security and protection of title insurance policyholders.<sup>149</sup>

The current Insurance Commissioner is the Honorable John Garamendi, former State Senator and Assembly Member.

<sup>132</sup> *Revenue and Taxation Code*, Sections 30001–30479.

<sup>133</sup> *Revenue and Taxation Code*, Sections 32001–32556.

<sup>134</sup> *Revenue and Taxation Code*, Sections 38101–38908.

<sup>135</sup> *Revenue and Taxation Code*, Sections 40001–40191.

<sup>136</sup> *Revenue and Taxation Code*, Sections 41001–41150.

<sup>137</sup> *Revenue and Taxation Code*, Sections 43001–43651.

<sup>138</sup> *Revenue and Taxation Code*, Sections 7301–8404.

<sup>139</sup> *Revenue and Taxation Code*, Sections 12001–12170.

<sup>140</sup> *Insurance Code*, Section 12900. A term limit for the Insurance Commissioner was added by *Statutes of 1993*, Chapter 1227.

<sup>141</sup> *Government Code*, Section 11552. See also, footnote 3, *supra*, p. 37.

<sup>142</sup> *Insurance Code*, Section 12920.

<sup>143</sup> *Insurance Code*, Section 700.

<sup>144</sup> *Insurance Code*, Section 12906.

<sup>145</sup> *Insurance Code*, Section 12921.

<sup>146</sup> See, e.g., *Finance Code*, Sections 22505, 24458.1, 24505.

<sup>147</sup> *Corporations Code*, Section 201.5.

<sup>148</sup> *Government Code*, Sections 16527, 16616.

<sup>149</sup> *Insurance Code*, Section 12350.



HENRY A. LYONS,  
Associate Justice,  
Dec. 26, 1849 to Jan. 1, 1852.



S. C. HASTINGS,  
Chief Justice,  
Dec. 22, 1849 to Dec. 31, 1851.



NATHANIEL BENNETT,  
Associate Justice  
Dec. 26, 1849 to Oct. 3, 1851.

The first Supreme Court of California, 1849.



The 1994 California Supreme Court.  
L. to R.: Marvin Baxter, Stanley Mosk, Joyce Kennard,  
Chief Justice Malcolm Lucas, Armand Arabian,  
Edward Pannelli, Ronald George.